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Treatment, Not Trials

Republican Plan Gives Patients a Bill of Rights; Democrats Give Lawyers the Right to Bill

Republicans have a better way to give patients powerful new tools to get the healthcare they need, tools that the President's own hand-picked healthcare commission recommended. With new, no-cost independent external review procedures, healthcare issues will be resolved quickly, rather than mired in costly and lengthy litigation. Democrats insist that the only way to address Americans' concerns about their healthcare is to give professional trial lawyers the right to sue health plans for damages. However, the blunt instrument of lawsuits will do nothing to help Americans get the healthcare they need — today. It only will add to a malpractice system that is out of control.

Protecting the Unprotected

- ☞ Republicans protect the unprotected by, for the first time, **giving new rights and remedies to 48 million Americans** in healthcare plans that are not subject to state law for such rights.
- ☞ These new rights, combined with current and **new protections for the 124 million in privately provided health insurance** covered by the federal law known as ERISA, means all Americans with this healthcare coverage can now be protected from bad actors.

New Decision Requirements

- ☞ ERISA plans must make routine healthcare decisions within 30 days, and act within 72 hours if the treating healthcare professional determines that further delay could seriously jeopardize the patient's life or health.

New Internal and External Appeal Rights

- ☞ For the first time, patients *and* doctors can appeal adverse decisions, and expect results in 30 days. A 72-hour deadline is created for urgent appeals. And the review is conducted by individuals with appropriate expertise who weren't involved in the initial decision.
- ☞ Republicans' interest is in patients' health — and external review guarantees that. For the first time, patients have guaranteed access to review of healthcare decisions by independent medical experts. Decisions must be made within 30 days, and the decision of the expert reviewer is binding on the plan.

Protects Balance Between Rights to Sue and Rights to Healthcare

- ☞ Patients today can already sue in Federal or state court for attorneys' fees, court costs, value of the benefit and injunctive relief.

- ☞ The Republican bill guarantees that health outcomes won't be determined in a courtroom; and, more importantly, that doctors' fears of outrageous professional trial lawyers won't lead to reduced or inadequate care.
- ☞ For example: from 1982-88, during the last period of exploding lawsuits, according to *Medical Economics*, 90 percent of family physicians, 89 percent of general practitioners, 72 percent of OB/GYNs, and 90 percent of neurosurgeons eliminated some high-risk services because of fear of malpractice lawsuits.

Expansion of Lawsuits Drives Up Patients' Costs . . .

- ☞ Accelerating litigation will increase premium costs by as much as 8.6 percent over the next five years, according to a review of the Kennedy-Care bill by an independent accounting firm.
- ☞ Malpractice insurance already costs \$9 billion a year and "defensive medicine" costs an additional \$10 to \$20 billion annually, according to Lewin-Meyer — costs paid by the insured, patients and their families.
- ☞ According to CBO, Kennedy-Care will nearly double anticipated premium increases this year — which means they'll likely rise some 9.5 percent over this year's costs.

. . . Threatens Coverage . . .

- ☞ Three out of four insured working Americans receive their healthcare coverage through their employers, and 96 percent of businesses are small businesses (that is, 50 or fewer employees).
- ☞ A poll of small employers earlier this year found 57 percent of them could dump healthcare coverage for their employees if lawsuit liability is expanded to cover them, as Senator Kennedy proposes.

. . . And Won't Get Patients Treatment They Need, When They Need It

- ☞ Patients lose under the Kennedy bill, when they are forced to sue after the fact. Unlike Republican proposals for internal and external review, it takes an average of 33 months to resolve malpractice cases, according to the GAO. One case took 11 years! That's ludicrously long for life-and-death decisions.
- ☞ Patients only receive 43 cents of every dollar awarded in malpractice cases, according to the RAND Corporation.
- ☞ Standard lawyer contingency fees start at one-third of the settlement, and legal expenses are often deducted from the remainder.

Special Interests And the Democrats

- ☞ Trial lawyers gave \$55 million to federal candidates from 1989-1996, according to Campaign Data Research, and gave \$103 million to all candidates. According to a recent Center for Responsive Politics study, 90 percent of their contributions went to Democrats.